



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

JUL 10 1998

MEMORANDUM FOR: Distribution*
FROM: *George H. Darcy*
George H. Darcy
Chief, Domestic Fisheries Division - F/SF3
SUBJECT: Amendment 3 to the Fishery Management Plan for
the Precious Corals Fisheries of the Western
Pacific Region (FMP)

The Western Pacific Fishery Management Council (Council) has submitted Amendment 3 for Secretarial review, approval, and implementation. If approved and implemented, Amendment 3 would establish framework procedures for regulatory changes under the FMP. Under the proposed framework procedures, the Council and the National Marine Fisheries Service (NMFS) would be able to change elements of the management regime governing the Western Pacific precious corals fisheries through rulemaking rather than by FMP amendment. The procedures would specify how certain new measures may be promulgated in response to changes that may occur rapidly in the fishery, as well as how established measures (e.g., seasons, permit requirements, quotas, closures, area limitations, gear and coral size restrictions) may be revised without the Council having to develop and NMFS implement an FMP amendment. With the concurrence of the Council, the Southwest Regional Administrator, NMFS, would be able to initiate rulemaking. Each action taken under the framework process would entail documentation of the analysis of impacts of that action. Advance public notice, public discussion, and consideration of public comments would be required.

Please provide your comments (including "no comments") by Monday, August 3, 1998. If you have any questions, please call Robert Gorrell or Paula Evans at (301) 713-2341.

Attachment

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WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

Amendment 3

to the

**Fishery Management Plan for the
Precious Corals Fisheries
of the Western Pacific Region**

May 1998

Western Pacific Regional Fishery Management Council
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2.0 SUMMARY

This amendment adds framework procedures to the FMP which would provide for adjustments of certain management measures as more information on the fisheries and the status of the stocks becomes available. A framework process offers greater flexibility and shorter response times to detectable changes in the fishery.

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4.0 INTRODUCTION

4.1 Responsible Agencies

The Western Pacific Regional Fishery Management Council (Council or WPRFMC) was established by the Magnuson Fishery Conservation and Management Act (Magnuson Act) to develop fishery management plans (FMPs) for fisheries operating in the US Exclusive Economic Zone (EEZ) around American Samoa, Guam, Hawaii, the Northern Mariana Islands and US possessions in the Pacific. Once an FMP is approved by the Secretary of Commerce (Secretary), it is implemented by federal regulations which are enforced by the National Marine Fisheries Service (NMFS) and the US Coast Guard, in cooperation with state agencies.

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4.2 Public Review Process and Schedule

A summary of draft preliminary Amendment 3 was presented at meetings of the Council's Precious Corals Plan Team and Scientific and Statistical Committee. A public hearing was held on Oahu at the November 1997 Council meeting. The preliminary draft amendment package was available upon request to any interested people. The Council took action in November 1997 and directed staff to complete Amendment 3 for review by NMFS and the public.

4.3 List of Preparers

Amendment 3 was prepared by (listed alphabetically):

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implemented. The lack of domestic involvement is due, at least in part, to the present 1000 kg annual harvest quotas for Exploratory Areas. Some potential entrants have indicated that the quotas are too small to provide the economic incentive necessary to induce exploration. No legal foreign fishing has taken place possibly for the same reason.

Amendment 1 to the FMP established an "experimental fishing permit" (EFP) system, under which a US interest could potentially fish with higher quotas or innovative gear under tightly monitored conditions. It was hoped that this approach would stimulate the domestic fishery. However, only one party fished under an EFP in the EEZ around Hawaii, making three trips with virtually no success. There has been no fishing since 1990.

7.2 Status of Coral Beds

The cumulative harvest of *Corallium* from the Makapu'u bed between 1966 and 1978 was about 32% of the standing stock. The average annual harvest was 685 kg, somewhat less than the estimated MSY of 1000 kg. Surveys of the Makapu'u bed in 1983 and 1985 showed substantial recovery at rates in close agreement with model predictions in the FMP. The Makapu'u bed appears to be healthy enough to once again sustain a small domestic harvest quota. The most recent survey of the bed showed it to be at least 15 percent larger than indicated by previous surveys.¹ The survey also showed that the recovery of pink coral has increased from 74% of the virgin biomass in 1978 to 90% in 1997. However, the assessment indicated that the recruitment of gold coral at the Makapu'u bed may be very low.

Nothing is known about the status of the precious coral resources in the Exploratory Areas. Foreign poaching has been a serious problem in the past. During the 1980s Japanese and Taiwanese coral vessels violated the EEZ frequently near the Hancock Seamounts. In 1985, Taiwanese coral draggers reportedly poached about 100 tons of *Corallium* from seamounts within the EEZ north of Gardner Pinnacles and Laysan Island. Absence of poaching since that time could indicate that the resources in these areas have been economically exhausted. With the exception of the Makapu'u bed and those beds harvested by foreign fishermen, most other precious coral beds within the EEZ are believed to be in an unexploited or "virgin" state.

7.3 Need for Action

The Council is operating in an environment of great uncertainty with regard to the distribution and abundance of precious coral resources, especially with regard to those in Exploratory Areas. Given this situation, the Council includes in the FMP (through this amendment) framework procedures which would provide for adjustments of certain management measures as more information on the fisheries and the status of the stocks becomes available. A framework process offers greater flexibility and shorter response times to detectable changes in the fishery. For example, it may be necessary to impose a quota or other regulations on the harvest of black coral if a fishery for those corals develops. In addition, quotas for pink, gold or bamboo corals could be quickly brought in line with the abundance and distribution of these species as information is collected by the fishery. With the framework procedures, quota revisions would not require amending the FMP, which can be quite slow and costly for both the Council

¹Richard W. Grigg. Resurvey of the Makapu'u Precious Coral Bed: August 21 - 22, 1997. Report to the 94th meeting of the Western Pacific Council held in November 1997.

and NMFS.

8.0 PREFERRED ACTIONS

The following framework process allows for modifying the regulatory measures that govern the precious corals fishery if the information supports such changes.

8.1.1 Regulatory Procedure 1: Modification of Established Measures

Established measures are those that are, or have been, in place for the fishery, including: fishing seasons, classification of coral beds, harvest quotas for all management unit species, size restrictions, area restrictions, gear restrictions, incidental catches, and permit conditions. The estimated and potential impacts of these measures have been evaluated in the FMP. Changes in established measures would be made under the following procedure:

1. The Council would identify problems that may warrant action through the annual report or a separate report from the Plan Team, SSC, permit holders, enforcement officials, NMFS, or other sources.
2. At a Council meeting following completion or receipt of a report identifying a problem, the Council would discuss whether changes to established conservation and management measures would resolve the problem. Notice to the public and news media preceding the meeting would indicate that the Council intends to discuss and possibly recommend regulatory adjustments through the framework process for established measures to address the issue or problem. The notice must summarize the issue(s) and the basis for recommending the measures being reviewed and would refer interested parties to the document(s) pertaining to the issue.
3. Based on discussions at the meeting, which include participation by the Plan Team, SSC, or other Council organizations, the Council would decide whether to recommend action by the Regional Administrator.
4. The Regional Administrator would be asked to indicate any special concerns or objections to the possible actions being considered under the framework process and, if there are any concerns or objections, would be asked for ways to resolve them.
5. If the Council decides to proceed, a document would be prepared describing the problem and the proposed regulatory adjustment to resolve it. The document would demonstrate how the adjustment is consistent with the purposes of the established measure and that the impacts had been addressed in the document supporting the original imposition of the measure. The document would be submitted to the Regional Administrator with a recommendation for action. The Council may indicate its intent that the recommendations are to be approved or disapproved as a single action.
6. If the Regional Administrator approves part or all of the Council's recommendation, the Secretary, in accordance with the Administrative Procedure Act, may implement the approved change in an established measure by publishing a final rule, waiving advance notice and comment. This does not preclude the Secretary from deciding to provide additional opportunity for advance notice and comment, but contemplates that the Council process will satisfy the requirements of

the Magnuson Act and Administrative Procedure Act regarding prior notice and comment. Established measures are measures that have been evaluated and applied in the past, and adjustments under this framework must be consistent with the original intent of the measure and within the scope of analysis in previous documents supporting the existing measure.

8.1.2 Regulatory Procedure 2: Establishment of New Measures

New measures are those that have not been used before in managing the precious corals fishery. New measures may have been previously considered but rejected in a past FMP amendment or document, but the specific impacts on the beds and on permit holders have not been evaluated in the context of current conditions. Potential new measures include, but are not limited to, a limited access system or individual transferable quotas. The procedure for establishing new measures is as follows:

1. A Plan Team report (annual or in-season), or input from advisors, NMFS, or other agencies will first bring attention to a problem or issue that needs to be addressed at the next Council meeting. In its notice announcing the meeting, the Council would summarize the concern or issue raised, the party that has raised the problem, and the extent to which it is a new problem or a problem that may require new management measures. The Council would seek to identify all interested persons and organizations and solicit their involvement in discussion and resolution of this problem through the Council process, and the Council meeting notice in the *Federal Register* would emphasize that this problem will be discussed and that proposed actions may result.
2. The document presenting the problem to the attention of the Council would be distributed to all advisory bodies of the Council who have not yet received it, with a request for comments. The document also would be distributed to the Council's mailing list associated with the FMP to solicit comments and to indicate the Council would take up action at the following meeting. The Council's chairperson may request the Council's Precious Corals Standing Committee to discuss the issue and review the comments, if any, of the Plan Team, Advisory Panel, or SSC, and develop recommendations for Council action.
4. At the meeting, the Council would consider the recommendations of its Precious Corals Standing Committee, if any, and other Council organizations and would take comments from the public concerning the possible course of action. If the Council agrees to proceed with further action under the framework process, the issue would be placed on the agenda for the following meeting. A document describing the issue, alternative ways to resolve the issue, the preferred action, and the anticipated impacts of the preferred action, would be prepared and distributed to the public with a request for comments. A notice would be published in the *Federal Register* summarizing the Council's deliberations and preferred action and indicating the time and place for the Council meeting to take final action.
5. In its notice for the following meeting, the Council would indicate that it may take final action on the possible adjustment to regulations under this section. At the meeting, the Council would consider the comments received as a result of its solicitation of comments and take public comments during the meeting on the issue or problem. The Council would consider any new information presented or collected and analyzed during the comment period. The Regional Administrator would be asked to indicate any objections or concerns about any or all components of the measures being considered. The Council would then decide whether to recommend the

establishment of new management measures.

6. If the Council decides to proceed, it would submit its proposal to the Regional Administrator for consideration, with supporting rationale and an analysis of the estimated biological, economic, and social impacts of the proposed action. The Council may indicate its intent that all components of its recommendations be approved or disapproved as a single action.

7. If the Regional Administrator concurs in whole or in part, the Secretary, in accordance with the Administrative Procedure Act, may implement the approved new measures by publishing a final rule, waiving advance notice and comment. Nothing in this procedure is intended to preclude the Secretary from deciding to provide additional opportunity for advance notice and comment in the *Federal Register*, but contemplates that the Council process (which includes two Council meetings with opportunity for public comment at each) would satisfy that requirement.

8. If a new action is approved and implemented, future adjustments may be made under the procedure for established measures (see Regulatory Procedure 1, above).

9.0 IMPACT ASSESSMENT

9.1 Establish Framework Procedures for Regulatory Changes

9.1.1 Impact of the Preferred Alternative

Adoption of the framework processes will not in itself result in any biological, economic or social impacts. Each action taken under the framework processes will entail documentation of the analysis of impacts of that action. To the extent appropriate, the Council will need to prepare regulations, regulatory analyses, environmental assessments, or other documents depending on the scope of the action, which framework process (if any) is being used, and the types and magnitude of impacts involved.

The preferred alternative allows for rapid adjustments to the regulatory regime. This is consistent with the Council's precautionary approach to fisheries management. Using framework procedures, the Council may be able to better reconcile the objectives of developing a sustainable domestic fishery without going through the FMP amendment process, which is set out in statute and may be procedurally cumbersome. Under frameworking procedures certain future adjustments, such as an in-season adjustment of the precious coral quota, could be made with a single notice in the Federal Register. Other management changes would more appropriately be undertaken by the FMP amendment process. In the event of an emergency which does not allow for timely management response under framework procedures or a regulatory amendment, the Council still has the option of requesting the Secretary of Commerce to take action, effective for a period of 90 days (with a possible 90-day extension), to manage the fishery while framework measures are being adopted and implemented.

Overall, the preferred alternative gives the Council a streamlined mechanism for adjusting conservation and management measures in the FMP as new information becomes available, thereby reducing the costs of those adjustments to the Federal government.

9.1.2 Impact of the Rejected Alternative

9.1.2.1 No action

If new scientific data becomes available that would support making an adjustment in the FMP, these adjustments could be accomplished by preparing full FMP amendments. However, this alternative may entail relatively slow response times and high administrative costs.

9.2 Evaluation of impacts relative to National Standards for Fishery Conservation and Management

National Standard 1 -- The amendment should tend to increase the net benefits of the fishery to the nation while preventing overfishing of the fishery resources.

National Standard 2 -- Adoption of a framework process would provide for adjustments of certain management measures as more information on the fisheries and the status of the stocks becomes available.

National Standard 3 -- The amendment may encourage the exploration of new precious coral beds, while providing for timely adjustment of management measures as new beds are discovered.

National Standard 4 -- The amendment will not discriminate between residents of different states.

National Standard 5 -- By facilitating the refinement of existing harvest quotas as new data becomes available a framework process could potentially improve the profitability of harvest operations without endangering the long-term productivity of the coral beds.

National Standard 6 -- The amendment will improve the ability to take into account and allow for variations among, and contingencies in, fisheries, fishery resources and catches.

National Standard 7 -- Adoption of a framework process should simplify the adjustment of conservation and management measures, and reduce the costs of those adjustments to the Federal government.

National Standard 8 -- A framework process could potentially improve the economic viability of harvest operations.

National Standard 9 -- Current precious coral harvesting technology (utilizing manned or unmanned submersibles) is highly selective and minimizes bycatch.

National Standard 10 -- The amendment will have a neutral effect on safety at sea.

10.0 RELATIONSHIP OF AMENDMENT 3 TO OTHER APPLICABLE LAWS AND POLICIES

10.1 Coastal Zone Management Act (CZMA)

The CZMA requires a determination that a FMP or amendment has no effect on the land or water uses or natural resources of the coast zone, or is consistent to the maximum extent practicable with an affected State's approved coastal zone management program. The Office of State Planning, State of Hawaii concurred with a determination made by the Council that the amendment is consistent, to the maximum extent practicable, with the State's coastal zone management programs.

10.2 Endangered Species Act (ESA)

Amendment 3 is not likely to have any effect on any listed endangered or threatened species, or habitat of those species.

10.3 Marine Mammal Protection Act (MMPA)

All fisheries, including the precious corals fishery, in the Western Pacific region are designated as Category 3, meaning that fishermen must report interactions with marine mammals, but they are not required to obtain exemption certificates in order to fish. This amendment does not require redesignation of MMPA category for the western Pacific precious corals fishery.

10.4 Paperwork Reduction Act (PRA)

The PRA requires federal agencies to minimize paperwork and reporting burdens whenever collecting information from the public. No additional record-keeping and reporting requirements are necessary to implement Amendment 3.

10.5 Regulatory Flexibility Act (RFA)

The RFA establishes the principle that federal regulations should be tailored to the capacity of regulated entities to bear the regulatory burden. This amendment will not have a significant economic impact on a substantial number of fishermen. A regulatory impact review and flexibility analysis will be performed when a regulatory review becomes necessary.

10.6 Indigenous Peoples' Fishing Rights

No management measures in this amendment will adversely affect any native Carolinian, Chamorro, Hawaiian or Samoan traditional indigenous fishing practices.

Section 305(i) of the Magnuson-Stevens Fishery Conservation and Management Act provides for the establishment of a Western Pacific Community Development Program. This provision was added to the Magnuson Act in 1996 to allow communities consisting of descendants of indigenous peoples in the Council's area to better share in the benefits from the area's fisheries. The Council and the Secretary, respectively, have discretion to develop and to approve programs for eligible communities for the purpose of enhancing access to the fisheries under the authority of the Council. The range of acceptable content of these programs will be determined by the Council and the

Secretary working together through the FMP process, including the framework procedures established by this amendment. Measures to improve access to the precious corals fishery may include setting aside a percentage of specific quotas and area closures. Joint venture agreements for the harvesting and processing of precious corals may also be employed.

10.7 Vessel Safety Considerations

The US Coast Guard has been asked to review this amendment from the standpoint of vessel safety. No vessel safety issues were identified.

10.8 National Environmental Policy Act (NEPA)

Adoption of the framework processes under the Amendment 3 will not in itself result in any biological, economic or social impacts. Each action taken under the framework processes will entail documentation of the analysis of impacts of that action. To the extent appropriate, the Council will need to prepare regulations, regulatory analyses, environmental assessments, or other documents depending on the scope of the action, which framework process (if any) is being used, and the types and magnitude of impacts involved. Therefore, in accordance with paragraph 6.02b.3(a) of NOAA Administrative Order 216-6, establishment of framework procedures in the FMP is categorically excluded from the NEPA requirement to prepare an environmental assessment.

11.0 APPENDICES

11.1 Draft Proposed Regulations

PART 660 -- Fisheries off West Coast and Western Pacific States

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C 1801 et. seq.

2. A new §660.89 is added to Subpart F to read as follows:

§660.89 Framework procedures.

(a) Introduction. New management measures may be added through rulemaking if new information demonstrates that there are biological, social, or economic concerns in precious corals permit area. The following framework process authorizes the implementation of measures that may affect the operation of the fisheries, gear, quotas, season, or changes in catch and/or effort.

(b) Annual report. By June 30 of each year, the Council-appointed Precious Corals Plan Team will prepare an annual report on the fisheries in the management area. The report shall contain among other things, recommendations for Council action and an assessment of the urgency and effects of such action(s).

(c) Procedure for established measures.

(1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, and for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 3 to the FMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion, and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(d) Procedure for new measures.

(1) New measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions.

(2) Following the framework procedures of Amendment 3 to the FMP, the Council will publicize, including by a Federal Register document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a Federal Register document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.